

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BOUTIQUE AIR INC.,

Petitioner,

V.

Civ. No. 24-1314

UNITED STATES DEPARTMENT OF  
TRANSPORTATION, AND PETE  
BUTTIGIEG, IN HIS OFFICIAL  
CAPACITY AS SECRETARY OF  
TRANSPORTATION,

## Respondents.

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

OCT 02 2024

RECEIVED

# PETITION FOR REVIEW OF AGENCY ORDER

Pursuant to 49 U.S.C. § 46110, and § 41731, et al., § 41733(c)(1), as amended by the FAA Reauthorization Act of 2024, Pub. L. No. 118-63, 138 Stat. 1025, 1215 (May 16, 2024), 5 U.S.C. § 706, and Rule 15(a) of the Federal Rules of Appellate Procedure, Petitioner Boutique Air Inc. (“Petitioner” or “Boutique”) hereby petitions this Court for review of the August 8, 2024 order of the Respondent United States Department of Transportation, Office of the Secretary (“Respondent,” “Department” or “DOT”), which rejected the application of Petitioner to provide Essential Air Service (“EAS”) to the McKellar-Sipes Regional Airport in Jackson, Tennessee Airport (“Airport”), and instead awarded the EAS contract to a competitor airline: Key Lime Air Corporation d/b/a Denver Air Connection “for the four-year term from December 1, 2024, through

November 30, 2028.” “Order Selecting Air Carrier,” DOT Docket No. DOT-OST-2000-7857, Order 2024-8-4 (the “EAS Decision”) (submitted as **Exhibit 1** hereto). The EAS Decision should be vacated pursuant to 5 U.S.C. § 706(2) because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without of procedure required by law; and/or unsupported by substantial evidence in the record. Among other things, and without limitation to other issues to be raised by Petitioner, the winning entity – Denver Air Connection – provides less frequent flights than Boutique Air and is demanding a subsidy that is millions of dollars higher than any of Boutique Air’s proposal options in only the first year, resulting in an irresponsible use of limited government resources, and ignoring the clear directive of Congress that mandated that the Department’s EAS program reduce unnecessary spending.

Petitioner is filing this Petition for Review as a prophylactic measure because the Department has not ruled on the Petition for Reconsideration that Boutique filed with the Department which was dated August 31, 2024 (**Exhibit 2** hereto). Petitioner is concerned that the Department may not rule on the Petition for Reconsideration until after the 60-day period in Section 46110(a), but then will assert that the Petition for Review of the August 8, 2024 EAS Decision is *untimely*. Petitioner understands that the Department may pursue a different tact and claim

that this Petition for Review is premature because the Department has not yet ruled on the Petition for Reconsideration.

In its Petition for Reconsideration, Boutique Air told the Department:

Finally, Boutique requests that the DOT issue a decision in response to this petition for reconsideration within 14 days of today. If DOT refuses to issue a ruling by that time, Boutique will properly conclude that DOT has issued a final decision which denies the reconsideration request. DOT cannot unlawfully interfere with Boutique's property rights and rights to due process, or to file a timely appeal or protest, by refusing to timely act on this petition for reconsideration.

Petition for Reconsider, Exhibit 2, at p. 4. The Department did not issue a decision within 14 days of the August 31 Petition for Reconsideration, and the EAS Decision may be deemed to be "final" on that basis.

In addition, Petitioner also requested that the Department resolve the Petition for Reconsideration no later than October 1, 2024. In a letter dated September 16, 2024, **Exhibit 3** hereto, Petitioner stated:

Although Boutique appreciates the Department's attention to its pending petitions for reconsideration, we are cognizant of the 60-day deadline to file a petition for review of the Department decisions with the Circuit Court of Appeals pursuant to 49 U.S.C. 46110. In order to avoid uncertainty in connection with the issue of ripeness of any petition that Boutique files – and to obtain resolution of outstanding issues sooner rather than later – Boutique respectfully requests that the Department resolve the pending petitions for reconsideration by or before October 1, 2024. While the Department has at times in the past timely ruled on petitions for reconsideration of EAS decisions, on other occasions, the Department has not timely ruled, which creates issues for the ripeness of the Circuit Court of Appeals. To avoid ripeness issues, the Department should timely respond to pending petitions for

reconsideration.

We respectfully ask that the Department issue rulings on the pending Boutique petitions for reconsideration no later than October 1, 2024. If the Department does not issue and provide Boutique with a copy of those decisions by that date, Boutique will reasonably assume that the lack of a ruling is in and of itself a final decision of the Department to deny the petition for reconsideration, and shall proceed on that basis.

We are available at your convenience to meet with you – in person or virtually – to discuss this matter. (*Id.*)

However, the Department did not respond to this letter by the October 1 deadline.

Wherefore, Petitioner Boutique Air, Inc. respectfully requests that the Court review and vacate the EAS Decision (**Exhibit 1** hereto) as violating the statutory requirements for EAS awards and the Administrative Procedure Act.

Respectfully submitted,

/s/ M. Roy Goldberg

M. Roy Goldberg, Esq.

D.C. Bar 416953

D.C. Circuit Bar No. 39860

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Email: rgoldberg@clarkhill.com

Counsel for Petitioner Boutique Air Inc.

Dated: October 2, 2024



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BOUTIQUE AIR INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. No. 24-_____
	)	
UNITED STATES DEPARTMENT OF	)	
TRANSPORTATION, AND PETE	)	
BUTTIGIEG, IN HIS OFFICIAL	)	
CAPACITY AS SECRETARY OF	)	
TRANSPORTATION,	)	
	)	
Respondents.	)	

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure and Circuit Rule 26.1(a), Petitioner Boutique Air Inc. submits the following for its Corporate Disclosure Statement: Boutique Air Inc. is a corporation organized under the laws of California. Boutique Air Inc. does not have a parent corporation and no public held entity owns 10 percent or more of the shares of Boutique Air Inc.

Undersigned counsel for Boutique Air Inc. certifies that he has reviewed the above information and that it is accurate to the best of his knowledge.

Respectfully submitted,

/s/ M. Roy Goldberg

M. Roy Goldberg, Esq.

D.C. Bar 416953

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Email: rgoldberg@clarkhill.com

Counsel for Petitioner Boutique Air Inc.

Dated: October 2, 2024

**CERTIFICATE OF SERVICE**

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that I have this 2nd day of October, 2024, caused to be served copies of the foregoing Petition for Review and Corporate Disclosure Statement by hand delivery and First-Class U.S. mail upon the following persons:

**BY HAND DELIVERY:**

The Hon. Pete Buttigieg  
Secretary of Transportation  
Office of the Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Paul M. Geier, Esq.  
Assistant General Counsel for Litigation  
Office of the General Counsel  
Office of Litigation and Enforcement  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Brian M. Boynton, Esq.  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

**BY FIRST CLASS MAIL:**

Mr. Cliff Honeycutt  
CEO/President  
Denver Air Connection, a Key Lime Air Corporation  
13252 E. Control Tower Road  
Englewood, CO 80112

Mr. Steve Smith C.M.  
Executive Director  
McKellar-Sipes Regional Airport  
Jackson-Madison County Airport Authority  
308 Grady Montgomery Dr.  
Jackson, TN 38301

Respectfully submitted,

/s/ M. Roy Goldberg

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Counsel for Petitioner Boutique Air Inc.



Order 2024-8-4  
Issued: August 8, 2024



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 8<sup>th</sup> Day of August, 2024

Essential Air Service at

**JACKSON, TENNESSEE**  
(FAIN 69A3452460559)<sup>1</sup>

**DOT-OST-2000-7857**

under 49 U.S.C. § 41731 *et seq.*

**ORDER SELECTING AIR CARRIER**

**Summary**

By this Order, the U.S. Department of Transportation (the Department) selects Key Lime Air Corporation d/b/a Denver Air Connection (DAC) to provide Essential Air Service (EAS) at Jackson, Tennessee, for the four-year term from December 1, 2024, through November 30, 2028. DAC will provide Jackson with a total of 12 weekly nonstop round trips to Hartsfield–Jackson Atlanta International Airport (ATL), using 30-seat Dornier 328 and 50-seat Embraer EMB-145 aircraft, at the annual subsidies listed in the table below.<sup>2</sup>

Year	Subsidy
Year 1	\$7,954,117
Year 2	\$8,510,905
Year 3	\$9,106,668
Year 4	\$9,744,135

**Background**

By Order 2022-3-18 (March 28, 2022), the Department selected Southern Airways to provide EAS at Jackson, for the two-year period from June 1, 2022, through May 31, 2024. Under the terms of that Order, Southern Airways was selected to provide Jackson with a total of 18 weekly nonstop round trips to ATL, using Cessna Grand Caravan aircraft, at an annual subsidy of \$2,558,436 for the first year and \$2,622,397 for the second year.

Subsequently, by Order 2023-9-10 (September 20, 2023), the Department approved the request of Jackson to alter its EAS pattern provided by Southern Airways, effective October 1, 2023, at

<sup>1</sup> FAIN = Federal Award Identification Number.

<sup>2</sup> Such subsidy is calculated on a fiscal year basis, subject to the availability of funds.

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no additional annual subsidy, by changing the service to add seasonal service to St. Louis Lambert International Airport (STL), as indicated in the table below.

Effective Dates	Hub(s)	Weekly Round Trips
June 1, 2022, through September 30, 2023	ATL	18
October 1, 2023, through May 31, 2024	ATL	11
	STL	7

In anticipation of the end of the current contract term, the Department issued Order 2023-11-16 (November 17, 2023) (RFI), soliciting proposals for a new term to provide EAS at Jackson, with or without subsidy. In response to that order, Boutique Air, Inc. (Boutique Air), Corporate Flight Management, Inc. d/b/a Contour Airlines (Contour), DAC, and Southern Airways submitted proposals for consideration.<sup>3</sup>

#### **Subsequent Order**

By Order 2024-6-5 (June 6, 2024), the Department extended the terms of Order 2022-3-18 until the earlier of: (1) December 31, 2024; or (2) the inauguration of new service following the conclusion of the pending air carrier selection proceeding for Jackson. Under this extension agreed to by the air carrier, Southern is required to provide EAS at Jackson and is receiving the annualized subsidy rate that it proposed in response to the Department's RFI (\$3,612,250 per year for providing 11 weekly round trips to ATL and seven weekly round trips to STL).

*[continued on page 3]*

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<sup>3</sup> Southern Airways initially submitted a proposal to provide EAS at Jackson without a subsidy. However, through a letter dated March 27, 2024, Southern Airways formally withdrew its zero-subsidy proposal. See "Southern Airways Express LLC (Zero Subsidy Proposal Bid at Jackson)," posted on April 10, 2024, available at: [www.regulations.gov/document/DOT-OST-2000-7857-0310](https://www.regulations.gov/document/DOT-OST-2000-7857-0310).



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**Summary of Air Carrier Proposals**

Jackson EAS Proposals											
Air Carrier (Option)	Annual Subsidy (Year 1)	Annual Subsidy (Year 2)	Annual Subsidy (Year 3)	Annual Subsidy (Year 4)	Round Trips per Week	Hub(s)	Aircraft	Seats	Marketing Plan	Interline/ Codeshare	Community Support
Boutique Air Option 1	\$3,295,117	\$3,295,117	\$3,525,775	\$3,772,580	18	BNA	PC-12	8 or 9	Yes	United (interline and codeshare) American (interline)	No
Boutique Air Option 2	\$3,958,189	\$3,958,189	\$4,235,262	\$4,531,730	12	BNA	PC-12	8 or 9	Yes	United (interline and codeshare) American (interline)	No
					6	ATL					
Boutique Air Option 3	\$4,696,046	\$4,696,046	\$5,024,769	\$5,376,503	18	ATL	PC-12	8 or 9	Yes	United (interline and codeshare) American (interline)	No
Boutique Air Option 4	\$4,977,846	\$4,977,846	\$5,326,296	\$5,699,136	14	ATL	PC-12	8 or 9	Yes	United (interline and codeshare) American (interline)	No
					7	STL					
Boutique Air Option 5	\$6,384,533	\$6,384,533	\$6,831,451	\$7,309,652	14	ATL	PC-12	8 or 9	Yes	United (interline and codeshare) American (interline)	No
					7	DTW					
Contour*	\$6,981,174	\$7,330,233	\$7,696,744	\$8,081,582	12	ORD	CRJ-200 or ERJ-135/140/145	30	Yes	American (interline)	No
Denver Air Connection	\$7,954,117	\$8,510,905	\$9,106,668	\$9,744,135	12	ATL	EMB-145 or Dornier 328	50/30	Yes	American, Delta, and United (interline)	Yes
Southern Airways Option A	\$3,612,250	\$3,702,556	\$3,795,120	\$3,889,998	11	ATL	Caravan	9	Yes	United (codeshare and interline)	No
					7	STL					
Southern Airways Option B	\$3,152,902	\$3,231,725	\$3,312,518	\$3,395,331	18	STL	Caravan	9	Yes	United (codeshare and interline)	No
*Contour fights to be conducted under 14 CFR Part 380 Public Charters authority, which is subject to Jackson waiving its right to scheduled air service.											

The complete public file, including air carrier proposals, for EAS at Jackson may be accessed online through the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov) by entering the community's docket number in the "Search" field.

**Community and State Comments**

On February 1, 2024, the Department requested comments from the community of Jackson regarding this selection case. In response, by letter dated March 18, 2024,<sup>4</sup> co-signed by Mr. Steve Smith, Executive Director of Jackson-Madison County Airport Authority; Mr. Rusty Reviere, Chairman of the Board of Jackson-Madison County Airport Authority; Mr. A.J. Massey, Mayor of Madison County; and Mr. Scott Conger, Mayor of the City of Jackson, the community provided support for DAC's proposal, stating that:

<sup>4</sup> See "The City of Jackson and Madison County, Tennessee (Comments)." March 20, 2024, available at: [www.regulations.gov/document/DOT-OST-2000-7857-0309](http://www.regulations.gov/document/DOT-OST-2000-7857-0309).

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After conducting research and listening to feedback from members of our community, the Jackson-Madison County Airport Authority EAS committee unanimously recommends Denver Air Connection (DAC) as the EAS provider for Jackson, TN. Our decision was thoughtfully made with the aim to connect our city with Atlanta, via a reliable, jet service provider. We are confident that DAC's 12 roundtrips per week from Jackson to Atlanta on their superior aircrafts will significantly increase passenger traffic at our airport.

Our current EAS provider, Southern Airways Express, has low reliability and a completion rate of only 56%, according to MKL's 2023 annual report records. This has resulted in many, many complaints from customers and made air travel unreliable for many individuals including those who have completely lost confidence in using MKL for air travel. Unfortunately, Boutique Air, the previous EAS provider, had a similar performance level and lost the contract due to deficient performance. Neither of these are viable options for MKL.

The Department also received several letters from members of the community expressing frustration with the current lack of reliability in air service provided by Southern Airways.<sup>5</sup>

### **Decision**

Title 49 U.S.C. § 41733(c)(1)<sup>6</sup> directs the Department to consider, among other factors, five specific factors when making an air carrier selection for a community not in Alaska where basic EAS will not be provided without compensation:<sup>7</sup> (A) the demonstrated reliability of the applicant in providing scheduled air service; (B) the contractual, marketing, code-share, or interline arrangements the applicant has made with a larger air carrier serving the hub airport; (C) the preferences of the actual and potential users of air transportation at the eligible place, including the views of the elected officials representing the users; (D) whether the air carrier has included a plan in its proposal to market its services to the community; and (F) the total compensation proposed by the air carrier for providing scheduled air service under this section.<sup>8</sup> In addition, for a place not in Alaska, section 41732(b)(1)(A) requires basic EAS to include at least two daily round trips six days a week.

DAC's proposal meets the air carrier selection criteria the Department is required to consider. DAC has interline agreements with larger air carriers, has provided reliable air service at other EAS communities, and included in its proposal a marketing plan to spend a minimum of \$20,000 annually. The community expressed overwhelming preference for DAC, based on its aircraft type, reputation, and reliability in markets similar to Jackson, and the Department finds DAC's service and subsidy levels reasonable.

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<sup>5</sup> See Community Comments (16), April 17, 2024, available at [www.regulations.gov/document/DOT-OST-2000-7857-0311](https://www.regulations.gov/document/DOT-OST-2000-7857-0311).

<sup>6</sup> As amended by the FAA Reauthorization Act of 2024, Pub L. No. 118-63, May 16, 2024, 138 Stat 1025, 1215 ("FAA 2024").

<sup>7</sup> The Department did not receive any proposals to provide EAS at Jackson without subsidy.

<sup>8</sup> Section 41733(E) only applies to EAS operations in Alaska.



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Therefore, the Department selects DAC to provide Jackson with a total of 12 weekly round trips to ATL for a four-year term.

### **Service Transition**

The Department expects DAC and Southern Airways to work together to make a smooth transition at Jackson with no service hiatus. Before Southern Airways suspends service, the Department expects the air carrier to notify all passengers holding reservations for travel after the suspension date, to assist those passengers in making alternate air transportation arrangements, or to provide a full refund of the ticket price, without penalty, if requested.

### **Reminder About EAS Eligibility**

To remain eligible for EAS, communities must comply with all applicable EAS eligibility requirements. We note that many of the eligibility requirements, including those below, do not apply for Fiscal Year 2024, pursuant to Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, March 9, 2024, 138 Stat 25, 303. However, unless Congress waives this eligibility criteria for future fiscal years, compliance will resume at the beginning of Fiscal Year 2025 (October 1, 2024).

Title 49 U.S.C. § 41731(a)(1)(B) provides that a community must maintain an average of 10 enplanements per service day, as determined by the Secretary of Transportation, during the most recent fiscal year, to remain eligible for EAS. Communities, such as Jackson, that are not more than 175 driving miles from the nearest large or medium hub airport, are subject to this requirement under 49 U.S.C. § 41731(d).

As amended by FAA 2024, 49 U.S.C. § 41731(a)(1)(C)(iii)<sup>9</sup> requires that EAS communities less than 175 miles from the nearest large or medium hub airport have an average subsidy per passenger, as determined by the Secretary, of less than \$650. Jackson is subject to this requirement, because it is not more than 175 miles from the nearest large- or medium-hub airport.

EAS communities, except for those in Alaska and Hawaii, must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, regardless of the distance to the nearest large- or medium-hub airport.<sup>10</sup> Effective October 1, 2026, this amount is reduced to \$850.<sup>11</sup>

Under 49 U.S.C. § 41731(e)(1), the Secretary may waive, on an annual basis, subsections (a)(1)(B) and (a)(1)(C)(iii) with respect to an eligible place if such place demonstrates to the Secretary's satisfaction that the reason the eligibility requirements of such subsections are not met is due to a temporary decline in demand. Limitations on these waivers begin October 1, 2026, when the Secretary may not provide a waiver for any community (a) in more than two consecutive fiscal years; or (b) in more than five fiscal years within 25 consecutive years.<sup>12</sup>

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<sup>9</sup> Under 49 U.S.C. § 41731(c), this requirement does not apply to EAS eligible communities located in the states of Alaska and Hawaii.

<sup>10</sup> See 49 U.S.C. § 41731(a)(1)(C)(i) in FAA 2024.

<sup>11</sup> See 49 U.S.C. § 41731(a)(1)(C)(ii) in FAA 2024.

<sup>12</sup> 49 U.S.C. § 41731(e), as amended by FAA 2024.

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The Department expects DAC and Jackson to work together to ensure that the community will comply with the applicable eligibility requirements. Communities that fail to comply with applicable above requirements may risk having their eligibility in the EAS program terminated. In the event the Department terminates a community's eligibility for EAS due to lack of compliance, that action will supersede this Order.

#### **Air Carrier Fitness**

Title 49 U.S.C. §§ 41737(b) and 41738 require that the Department find an air carrier fit, willing, and able to provide reliable service before the Department may subsidize it to provide EAS. DAC is subject to the Department's continuing fitness requirements, and no information has come to the Department's attention that would cause the Department to question the air carrier's fitness at this time. In addition, the Federal Aviation Administration has not raised concerns that would negatively affect the Department's fitness findings. The Department therefore concludes that DAC remains fit to conduct the operations proposed at Jackson.

This Order is issued under authority redelegated by the Under Secretary of Transportation for Policy in 49 CFR § 1.25a(b)(6)(ii)(D), as directed by the Assistant Secretary for Aviation and International Affairs under 49 CFR § 1.60(b).

#### **Accordingly,**

1. The Department selects Key Lime Air Corporation d/b/a Denver Air Connection to provide Essential Air Service at Jackson, Tennessee, from December 1, 2024, through November 30, 2028, in accordance with the proposal set forth in Appendix A, and establishes the annual subsidy rates as described in Appendix B;
2. The Department makes this selection contingent upon receiving properly-executed certifications from Key Lime Air Corporation d/b/a Denver Air Connection that it is in compliance with the Department's regulations regarding drug-free workplaces and nondiscrimination, as well as the regulations concerning lobbying activities;<sup>13</sup>
3. The Department directs Key Lime Air Corporation d/b/a Denver Air Connection to retain all books, records, and other source and summary documentation to support claims for payment, including copies of flight logs for aircraft used to provide EAS under this Order and sold or disposed of, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. This documentation shall be retained for three years from the last day of service under this Order, or such longer period as the Department may notify the air carrier. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The air carrier may forfeit its compensation for any claim that is not supported under the terms of this Order;
4. The Department finds that Key Lime Air Corporation d/b/a Denver Air Connection is fit, willing, and able to perform Essential Air Service at Jackson, Tennessee;

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<sup>13</sup> The certifications are available online under "Reports and Publications" at <http://www.transportation.gov/office-policy/aviation-policy/essential-air-service-reports>.

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5. This docket will remain open pending further Department action; and
6. The Department will serve this Order on the civic officials of Jackson and Madison County, Tennessee, the Airport Manager of McKellar-Sipes Regional Airport, and the Chairman of Jackson-Madison County Airport Authority, Boutique Air, Inc., Corporate Flight Management, Inc. d/b/a Contour Airlines, Key Lime Air Corporation d/b/a Denver Air Connection, and Southern Airways Express LLC.

By:

**CINDY A. BARABAN**  
Deputy Assistant Secretary  
for Aviation and International Affairs

(SEAL)

*An electronic version of this document is available at*  
[www.regulations.gov](http://www.regulations.gov)



## Appendix A

**Key Lime Air Corporation d/b/a Denver Air Connection**  
**Annual Compensation Requirements for Essential Air Service at Jackson, Tennessee**  
**To Provide 12 Round Trips per Week to Hartsfield–Jackson Atlanta International Airport (ATL)**



## Bid Proposal

Denver Air Connection will provide 12 round-trips per week to Hartsfield-Jackson Atlanta International Airport (ATL) in a jet aircraft. The proposal is for a two-year term with a four-year option.

<b>Denver Air Connection</b>	
<b>Essential Air Service Bid</b>	
<b>January 31, 2024</b>	
	<u>        MKL-ATL        </u>
ERJ145 / 328Jet round trips / week	12
<b>Aircraft Data</b>	
	<u>        ERJ145/328Jet        </u>
Block Hours	1,502
Available Seats	37,440
Load Factor	47%
<b>Passenger Revenue</b>	
Passengers	17,597
Average Fare	<u>        110.00        </u>
Revenue	1,935,648
<b>Expenses</b>	
Aircraft Lease	990,000
Crew Cost	1,863,710
Maintenance	1,649,053
Insurance	390,000
Overhead Facilities and Staff	492,000
ATL Operating Expense	1,160,549
MKL Operating Expense	389,044
Deice, Catering and Misc.	76,387
Marketing	20,000
Fuel Cost	<u>        2,368,080        </u>
Total Expense	9,418,824
<b>Annual Subsidy Requirement</b>	
Operating Income	(7,483,176)
Profit (5%)	<u>        470,941        </u>
Total Subsidy Year 1	7,954,117
Total Subsidy Year 2	8,510,905
Total Subsidy Year 3	9,106,668
Total Subsidy Year 4	9,744,135
<b>Effective Subsidy Rates</b>	
Subsidy per Trip (97% completion)	6,571
Subsidy per Passenger	452



## Appendix B

**Key Lime Air Corporation d/b/a Denver Air Connection  
Essential Air Service to be provided at Jackson, Tennessee  
DOT-OST-2000-7857**

<u>Contract Term:</u>	December 1, 2024, through November 30, 2028
<u>Hub(s)</u>	Hartsfield–Jackson Atlanta International Airport (ATL)
<u>Scheduled Service:</u>	Twelve (12) nonstop round trips each week
<u>Aircraft/Seats:</u>	30-seat Dornier 328 and 50-seat Embraer EMB-145
<u>First Year Subsidy:</u>	\$ 7,954,117
<u>Second Year Subsidy:</u>	\$ 8,510,905
<u>Third Year Subsidy:</u>	\$ 9,106,668
<u>Fourth Year Subsidy:</u>	\$ 9,744,135
<u>First Year (June 1, 2024, through May 31, 2025) Rate per Eligible Flight:</u>	\$6,568 <sup>14</sup>
<u>First Year Weekly Ceiling:</u>	\$157,632 <sup>15</sup>
<u>Second Year (June 1, 2025, through May 31, 2026) Rate per Eligible Flight:</u>	\$7,028 <sup>16</sup>
<u>Second Year Weekly Ceiling:</u>	\$168,672 <sup>17</sup>
<u>Third Year (June 1, 2026, through May 31, 2027) Rate per Eligible Flight:</u>	\$7,520 <sup>18</sup>
<u>Third Year Weekly Ceiling:</u>	\$180,480 <sup>19</sup>
<u>Fourth Year (June 1, 2027, through May 31, 2028) Rate per Eligible Flight:</u>	\$8,046 <sup>20</sup>
<u>Fourth Year Weekly Ceiling:</u>	\$193,104 <sup>21</sup>

**Note:** The air carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate Order, including the service plans outlined in the Order and any other significant elements of the required service, without prior approval. The air carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the air carrier does not schedule or operate its flights in full conformance with the Order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the air carrier contemplates any such changes beyond the scope of the Order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written

<sup>14</sup> Annual compensation of \$7,954,117 divided by 1,211 annual departures (24 weekly departures x 52 weeks x 97 percent completion).

<sup>15</sup> 24 flights per week multiplied by \$6,568 per flight.

<sup>16</sup> Annual compensation of \$8,510,905 divided by 1,211 annual departures (24 weekly departures x 52 weeks x 97 percent completion).

<sup>17</sup> 24 flights per week multiplied by \$7,028 per flight.

<sup>18</sup> Annual compensation of \$9,106,668 divided by 1,211 annual departures (24 weekly departures x 52 weeks x 97 percent completion).

<sup>19</sup> 24 flights per week multiplied by \$7,520 per flight.

<sup>20</sup> Annual compensation of \$9,744,135 divided by 1,211 annual departures (24 weekly departures x 52 weeks x 97 percent completion).

<sup>21</sup> 24 flights per week multiplied by \$8,046 per flight.

Appendix B  
Page 2 of 2

approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement air carrier to provide service on these routes. The air carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this Order, then, at the end of the period for which the Department does make payments in the stipulated service amounts, the air carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and air carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

Funds may not be available for performance under this Order beyond September 30, 2024. The Government's obligation for performance under this Order beyond September 30, 2024, is subject to the availability of funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this order beyond September 30, 2024, until funds are made available to the Department for performance. If sufficient funds are not made available for performance beyond September 30, 2024, the Department will provide notice in writing to the air carrier.

All claims for payment, including any amended claims, must be submitted within 90 days of the last day of the month for which compensation is being claimed. For example, claims for service provided in July must be filed by October 31; August claims must be submitted by November 30, and so on.



Boutique Air Inc  
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August 31, 2024

Attention:

Mr. Scott Faulk

Mr. Kevin Schlemmer

U.S. Department of Transportation

E&S & Domestic Analysis Division

1200 New Jersey Avenue, S.E.

Washington, D.C. 20590

Re: EAS at Jackson, Tennessee Docket No. DOT-OST-2000-7857

Dear Mr. Faulk and Mr. Schlemmer,

Boutique Air hereby respectfully submits this Petition for Reconsideration of the U.S. Department of Transportation ("DOT")'s decision to reject Boutique Air's proposal to provide Essential Air Service ("EAS") at Jackson, Tennessee.

On August 8, 2024, the DOT awarded a four-year contract to Denver Air Connection ("DAC") to provide EAS at Jackson, Tennessee. For the same contract, Boutique Air (a/k/a "BTQ") submitted a valid proposal to serve this community at a significantly lower subsidy than DAC's proposal. Boutique Air has demonstrated extraordinarily solid reliability (99.78% controllable completion for the last two years). DAC provides less frequent flights and they are demanding a subsidy that is millions higher than any of Boutique Air's proposal options in only the first year. Not only is this an irresponsible use of limited government resources, but it ignores the clear directive that Congress has mandated for the EAS program to reduce unnecessary spending.<sup>1</sup>

The DOT considers 5 criteria when determining which carrier to award an EAS contract:

1) Interline and/or codeshare agreements with major carriers operating at the intended hub airports 2) the air carrier's ability to provide reliable service 3) the community's preference 4) the inclusion of a marketing plan by the carrier to market its service to the community in its proposal, and 5) the overall cost for the service in terms of subsidy required. In its Jackson, TN decision, the DOT failed to consistently apply these criteria, especially given that Boutique Air submitted a proposal that was cheaper and/or superior to other proposals. Although the DOT does not have to award EAS contracts purely on a cost basis, the fact remains that Boutique met all of the relevant criteria, and had a much lower price than DAC.

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<sup>1</sup> See Exhibits C and D





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Most people would agree that having more flight options and connection opportunities is advantageous to the flying public because it provides more consumer choices for departure times and in turn opportunities to connect on other airlines at the larger hub airport. With DAC, Jackson does not get flight schedules ranging from early morning to late evening, resulting in dramatically fewer connection opportunities for travelers throughout the day. The DOT has arbitrarily decided that DAC provides ample connection opportunities and this simply is not true when compared to the BTQ proposal.

Boutique Air also is troubled by the fact that under the new EAS selection criteria as determined by congress, the DOT is selectively applying this criteria to all except in circumstances that would favor Boutique Air. In Rutland, Vermont in 2019 the DOT selected a bid that was lower than Boutique Air, against the community's wishes, justifying it by suggesting that a savings of \$576,254 over a two-year term was worth defying the community. Back then, cost was not explicitly one of the five criteria for selecting an air carrier, which became a criteria only with the 2024 FAA Reauthorization Act.

In Quincy in 2017, after the mayor and city EAS selection committee decided to officially recommend Boutique Air, Quincy mayor Kyle Moore personally informed me that the DOT pressured him to rescind Quincy's decision to recommend Boutique Air and to select Skywest<sup>2</sup> (please see attached news article confirming the recommendation by Quincy for BTQ). This arbitrary and capricious behavior should not be engaged in by an agency which is legally required to provide a fair and responsible administration of the EAS program and is clear evidence of the extreme favoritism that has been rampant in EAS for years. Despite Quincy voting to recommend Boutique Air's proposal, following the pressure from DOT Quincy did in fact rescind its BTQ recommendation and recommended Skywest. The DOT awarded the contract to Skywest citing the excessive cost of the Boutique Air proposal. The total extra cost of the Boutique Air proposal over two years would have been \$344,480. Similar to what happened in Rutland, the difference is negligible compared with the millions the DOT is wasting in Jackson, Tennessee. Again, this decision to discriminate against BTQ was made during a time when cost was not explicitly one of the 5 selection criteria as it is now for Jackson with the 2024 FAA Reauthorization Act.

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<https://www.wtad.com/quincy-changes-course,-goes-with-skywest-for-essential-air-service.html#:~:text=Quincy%20changes%20course%2C%20goes%20with%20SkyWest%20for%20Essential%20Air%20Service,-6%20years%2C%2010&text=The%20Committee%2C%20meeting%20Thursday%20night,Service%2C%20and%20instead%20recommended%20SkyWest.>





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If the DOT is going to award an EAS contract to a bidder that is grossly more expensive than other legitimate proposals then a clear rationale to justify such a decision would be rudimentary expectation by any United States taxpayer. The DOT instead asserts that the DAC proposal is 'reasonable' without providing any justification for wasting millions of dollars. The awarding of such a bid follows a long pattern of unjustifiable and anti-competitive decision making while squandering millions of taxpayer dollars in the process.

In summary, the DOT's award of the EAS contract to DAC rather than Boutique is arbitrary and capricious, anti-competitive and in violation of DOT's prior practice. The DOT cited Boutique Air as being too expensive when Boutique bid Rutland and Quincy against the recommendations of the elected city officials and this was when the cost of the bid was not one of the primary decision making criteria AND when the recommendation of the city officials was the most important of the criteria. Now, following the recent passing of the 2024 FAA Reauthorization Bill, the bid cost is a primary criteria and the weight of the elected officials' recommendation has been reduced; Despite this clear direction from congress the DOT is asserting that an excess of \$4,285,865 per year of is "reasonable"--an excess that pales in comparison the the excesses that would have existed with Boutique Air bids when cost was not even a criteria and the elected officials mattered more. This is hypocritical, grossly preferential, as well as arbitrary and capricious.

One reason we assert that DAC's subsidy is not reasonable is the fact that, if this subsidy were applied today, Jackson would be terminated from the EAS program altogether.

Per the FAA Reauthorization Act of 2024, a community may qualify for EAS if the subsidy per passenger is below \$650 if the community is within 210 miles of the nearest large or medium hub airport. Jackson is 87.4 miles from Memphis International Airport, a Medium Hub Airport, and 135.6 miles from Nashville International Airport, a Large Hub Airport.<sup>3</sup> Jackson, Tennessee is subject to this subsidy cap.

In the last full Fiscal Year for which passenger traffic data is available, FY2023, Jackson saw a total of 6,680 passengers enplane or deplane at McKellar-Sipes Regional Airport. <sup>4</sup>If Denver Air Connection's subsidy had been awarded to transport this many passengers, it would amount to \$1,190.74 per passenger, which is nearly double the statutory limit and would result in permanent removal from the EAS Program for Jackson, Tennessee. Not only is it irresponsible of the DOT to award such an expensive

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<sup>3</sup> See Exhibits F and G.

<sup>4</sup> See Exhibit E



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bid to a community with this passenger traffic, but it is also irresponsible to award a bid that would adversely affect Jackson's eligibility for EAS in perpetuity. There are simply better options available that are better for the community with more connection opportunities and better flight schedules that do not threaten Jackson's eligibility to remain a part of the EAS Program. DAC's subsidy for Jackson is not only unreasonable, but also totally unjustifiable.

Attached is a table that details a cost comparison of all of Botuique's Proposal options versus Denver Air Connection's proposal. The difference ranges from \$8,405,656 to \$21,427,236 over four years.<sup>5</sup>

We also want to show that the DOT's decision is not only irresponsible financially, but also it is irresponsible to the environment. By selecting a service which uses a much larger aircraft powered by jet engines, the DOT is in effect causing anywhere from 15,534 to 16,571 additional tons of CO2 to be emitted over four years compared to any of the options from Boutique Air.<sup>6</sup>

Boutique Air is left with no alternative but to formally protest and petition the DOT to reevaluate its decision-making process and reconsider the proposal put forward by Boutique Air which better serves the community and the goals of EAS. We thank you for your time and consideration and look forward to your response.

Finally, Boutique requests that the DOT issue a decision in response to this petition for reconsideration within 14 days of today. If DOT refuses to issue a ruling by that time, Boutique will properly conclude that DOT has issued a final decision which denies the reconsideration request. DOT cannot unlawfully interfere with Boutique's property rights and rights to due process, or to file a timely appeal or protest, by refusing to timely act on this petition for reconsideration.

With respect and appreciation,

A handwritten signature in black ink, appearing to read 'Shawn Simpson', written over a horizontal line.

Shawn Simpson  
CEO, Boutique Air Inc

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<sup>5</sup> See Exhibit A

<sup>6</sup> See Exhibit B





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Exhibit A: Resources Wasted by Choosing Denver Air Connection over Boutique Air

DAC Proposal Subsidy Requirements	Year	Subsidy				
	Year 1	\$7,954,117				
	Year 2	\$8,510,905				
	Year 3	\$9,106,668				
	Year 4	\$9,744,135				
	Total	\$35,315,825				
Boutique Air Proposal Subsidy Requirements	Year	Option 1	Option 2	Option 3	Option 4	Option 5
	Year 1	\$3,295,117	\$3,958,189	\$4,696,046	\$4,977,846	\$6,384,533
	Year 2	\$3,295,117	\$3,958,189	\$4,696,046	\$4,977,846	\$6,384,533
	Year 3	\$3,525,775	\$4,235,262	\$5,024,769	\$5,326,296	\$6,831,451
	Year 4	\$3,772,580	\$4,531,730	\$5,376,503	\$5,699,136	\$7,309,652
	Total	\$13,888,589	\$16,683,370	\$19,793,364	\$20,981,124	\$26,910,169
Money Wasted by DOT Compared to Each Boutique Air Option	Milestone	Option 1	Option 2	Option 3	Option 4	Option 5
	1 Year	\$4,659,000	\$3,995,928	\$3,258,071	\$2,976,271	\$1,569,584
	2 Year Total	\$9,874,788	\$8,548,644	\$7,072,930	\$6,509,330	\$3,695,956
	3 Year Total	\$15,455,681	\$13,420,050	\$11,154,829	\$10,289,702	\$5,971,173
	4 Year Total	\$21,427,236	\$18,632,455	\$15,522,461	\$14,334,701	\$8,405,656







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## Exhibit C: Original Proposal of Denver Air Connection



### Bid Proposal

Denver Air Connection will provide 12 round-trips per week to Hartsfield-Jackson Atlanta International Airport (ATL) in a jet aircraft. The proposal is for a two-year term with a four-year option.

Denver Air Connection Essential Air Service Bid January 31, 2024	
	MKL-ATL
ERJ145 / 328Jet round trips / week	12
<b>Aircraft Data</b>	
	ERJ145/328Jet
Block Hours	1,502
Available Seats	37,440
Load Factor	47%
<b>Passenger Revenue</b>	
Passengers	17,597
Average Fare	<u>110.00</u>
Revenue	1,935,648
<b>Expenses</b>	
Aircraft Lease	990,000
Crew Cost	1,863,710
Maintenance	1,649,053
Insurance	390,000
Overhead Facilities and Staff	492,000
ATL Operating Expense	1,160,549
MKL Operating Expense	389,044
Deice, Catering and Misc.	76,387
Marketing	20,000
Fuel Cost	<u>2,368,080</u>
Total Expense	9,418,824
<b>Annual Subsidy Requirement</b>	
Operating Income	(7,483,176)
Profit (5%)	<u>470,941</u>
Total Subsidy Year 1	7,954,117
Total Subsidy Year 2	8,510,905
Total Subsidy Year 3	9,106,668
Total Subsidy Year 4	9,744,135
<b>Effective Subsidy Rates</b>	
Subsidy per Trip (97% completion)	6,571
Subsidy per Passenger	452



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Exhibit D: Excerpt from Selection Order DOT-OST-2000-7857-0313

**Summary**

By this Order, the U.S. Department of Transportation (the Department) selects Key Lime Air Corporation d/b/a Denver Air Connection (DAC) to provide Essential Air Service (EAS) at Jackson, Tennessee, for the four-year term from December 1, 2024, through November 30, 2028. DAC will provide Jackson with a total of 12 weekly nonstop round trips to Hartsfield–Jackson Atlanta International Airport (ATL), using 30-seat Dornier 328 and 50-seat Embraer EMB-145 aircraft, at the annual subsidies listed in the table below.<sup>2</sup>

Year	Subsidy
Year 1	\$7,954,117
Year 2	\$8,510,905
Year 3	\$9,106,668
Year 4	\$9,744,135

Exhibit E: Passenger Traffic at McKeller-Sipes Regional Airport, Jackson, Tennessee FY 2023

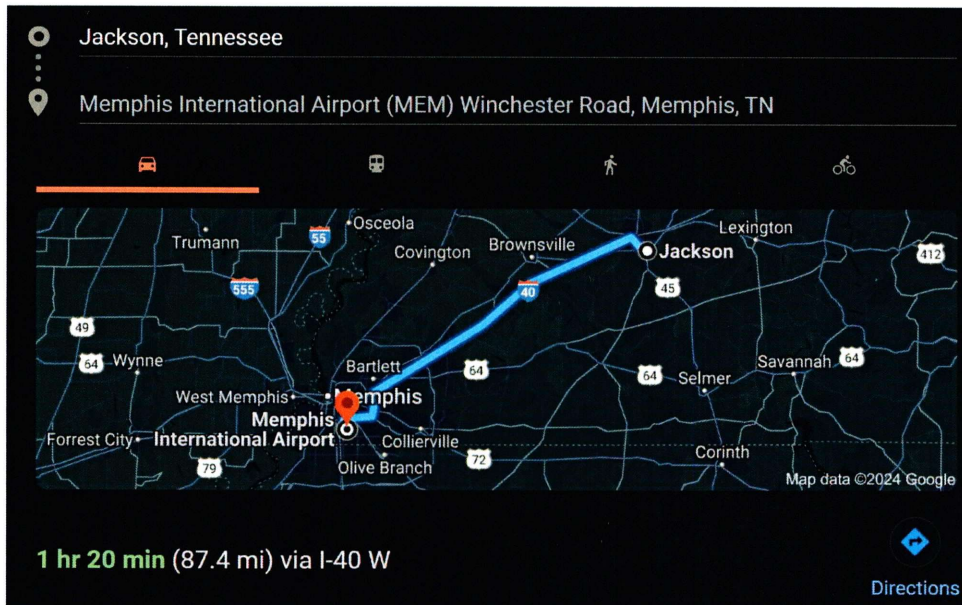
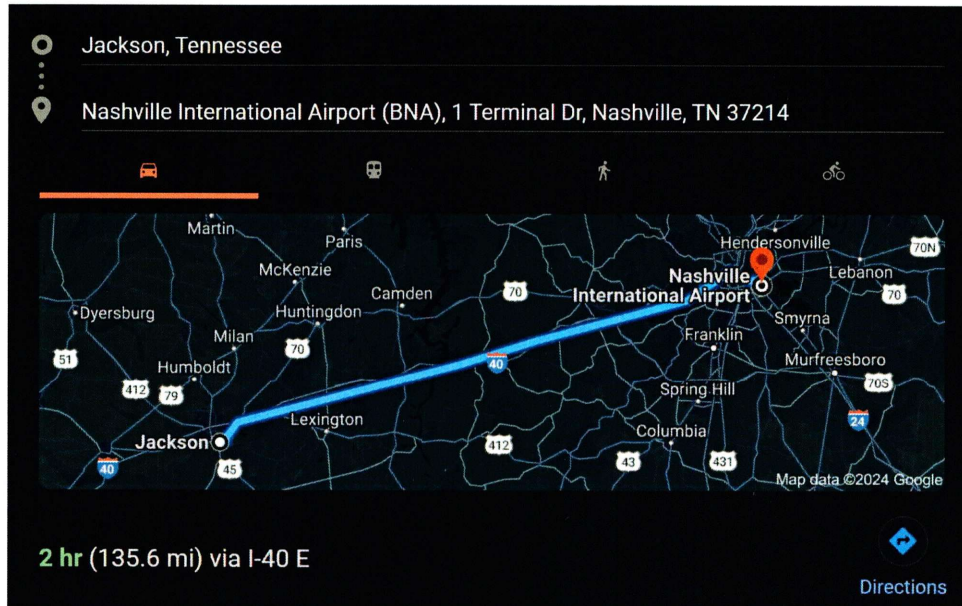
Year	Month	Enplanements	Deplanements	Total Passengers
2022	10	285	298	583
2022	11	308	278	586
2022	12	566	508	1074
2023	1	208	190	398
2023	2	206	203	409
2023	3	242	233	475
2023	4	243	211	454
2023	5	302	285	587
2023	6	272	267	539
2023	7	331	338	669
2023	8	234	195	429
2023	9	245	232	477
Total		3442	3238	6680
Source: Bureau of Transportation Statistics				





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Exhibit F: Driving Distances to MEM and BNA from Jackson, Tennessee





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### Exhibit G: CY2023 Preliminary Airport Rankings (Excerpt)

Source: ACAIS

Final CY23 Enplanements at Commercial Service Airports, by Rank order

6/18/2024

Rank	RO	ST	Locid	City	Airport Name	TS	Hub	CY 23 Enplanements	CY 22 Enplanements	% Change
1	SO	GA	ATL	Atlanta	Hartsfield - Jackson Atlanta International	P	L	50,950,023	45,396,001	12.23%
2	SW	TX	DFW	Fort Worth	Dallas-Fort Worth International	P	L	39,246,196	35,345,138	11.04%
3	NM	CO	DEN	Denver	Denver International	P	L	37,863,966	33,773,832	12.11%
4	WP	CA	LAX	Los Angeles	Los Angeles International	P	L	36,676,975	32,326,616	13.46%
5	GL	IL	ORD	Chicago	Chicago O'Hare International	P	L	35,843,081	33,120,474	8.22%
6	EA	NY	JFK	New York	John F Kennedy International	P	L	30,493,867	27,154,885	12.30%
7	SO	FL	MCO	Orlando	Orlando International	P	L	28,033,177	24,469,733	14.56%
8	WP	NV	LAS	Las Vegas	Harry Reid International	P	L	27,896,019	25,480,500	9.48%
9	SO	NC	CLT	Charlotte	Charlotte/Douglas International	P	L	25,896,193	23,100,300	12.10%
10	SO	FL	MIA	Miami	Miami International	P	L	24,716,890	23,949,892	3.20%
11	NM	WA	SEA	Seattle	Seattle-Tacoma International	P	L	24,594,202	22,157,862	11.00%
12	EA	NJ	EWK	Newark	Newark Liberty International	P	L	24,505,862	21,774,690	12.54%
13	WP	CA	SFO	San Francisco International Airport	San Francisco International	P	L	24,191,117	20,411,420	18.52%
14	WP	AZ	PHX	Phoenix	Phoenix Sky Harbor International	P	L	23,880,446	21,852,586	9.28%
15	SW	TX	IAH	Houston	George Bush Intercontinental/Houston	P	L	22,228,829	19,814,052	12.19%
16	NE	MA	BOS	Boston	General Edward Lawrence Logan International	P	L	19,962,577	17,443,775	14.44%
17	SO	FL	FLL	Fort Lauderdale	Fort Lauderdale/Hollywood International	P	L	17,042,632	15,370,165	10.88%
18	GL	MN	MSP	Minneapolis	Minneapolis-St Paul International/Wold-Chamberlain	P	L	17,019,086	15,242,089	11.66%
19	EA	NY	LGA	New York	Laguardia	P	L	16,173,072	14,367,463	12.57%
20	GL	MI	DTW	Detroit	Detroit Metro Wayne County	P	L	15,378,558	13,751,197	11.83%
21	EA	PA	PHL	Philadelphia	Philadelphia International	P	L	13,656,020	12,421,168	9.94%
22	NM	UT	SLC	Salt Lake City	Salt Lake City International	P	L	12,905,239	12,383,843	4.21%
23	EA	MD	BWI	Glen Burnie	Baltimore/Washington International Thurgood Marshall	P	L	12,849,626	11,151,169	15.23%
24	EA	VA	DCA	Arlington	Ronald Reagan Washington Ntl	P	L	12,365,011	11,553,850	7.02%
25	WP	CA	SAN	San Diego	San Diego International	P	L	12,190,159	11,162,224	9.21%
26	EA	VA	IAD	Dulles	Washington Dulles International	P	L	12,073,231	10,266,324	17.60%
27	SO	FL	TPA	Tampa	Tampa International	P	L	11,677,560	10,539,459	10.80%
28	SO	TN	BNA	Nashville	Nashville International	P	L	11,227,159	9,829,062	14.22%
29	SW	TX	AUS	Austin	Austin-Bergstrom International	P	L	10,833,394	10,362,573	4.34%
30	GL	IL	MDW	Chicago	Chicago Midway International	P	L	10,659,401	9,650,281	10.46%
31	WP	HI	HNL	Honolulu	Daniel K Inouye International	P	L	10,149,761	8,828,395	14.97%
			31				L Count			
32	SW	TX	DAL	Dallas	Dallas Love Field	P	M	8,559,009	7,819,129	9.46%
33	NM	OR	PDX	Portland	Portland International	P	M	8,123,024	7,241,882	12.17%
34	CE	MO	STL	St. Louis	St Louis Lambert International	P	M	7,307,544	6,709,080	8.92%
35	SO	NC	RDU	Raleigh	Raleigh-Durham International	P	M	7,118,953	5,849,665	21.70%
36	SW	TX	HOU	Houston	William P Hobby	P	M	6,800,214	6,462,948	5.22%





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Source: ACAIS

Final CY23 Enplanements at Commercial Service Airports, by Rank order

6/18/2024

Rank	RO	ST	Locid	City	Airport Name	PL	DB	CY 23 Enplanements	CY 22 Enplanements	% Change
37	WP	CA	SMF	Sacramento	Sacramento International	P	M	6,371,895	6,040,824	5.48%
38	SW	LA	MSY	Kenner	Louis Armstrong New Orleans International	P	M	6,309,196	5,931,899	6.36%
39	WP	CA	SJC	San Jose	Norman Y Mineta San Jose International	P	M	5,958,813	5,590,137	6.60%
40	SO	PR	SJU	San Juan	Luis Munoz Marin International	P	M	5,954,281	5,039,771	18.15%
41	WP	CA	SNA	Santa Ana	John Wayne/Orange County	P	M	5,706,292	5,536,313	3.07%
42	CE	MO	MCI	Kansas City	Kansas City International	P	M	5,654,088	4,796,476	17.88%
43	WP	CA	OAK	Oakland	Metro Oakland International	P	M	5,520,778	5,506,232	0.26%
44	SW	TX	SAT	San Antonio	San Antonio International	P	M	5,336,674	4,751,610	12.31%
45	SO	FL	RSW	Fort Myers	Southwest Florida International	P	M	4,963,261	5,132,694	-3.30%
46	GL	OH	CLE	Cleveland	Cleveland-Hopkins International	P	M	4,803,789	4,237,795	13.36%
47	GL	IN	IND	Indianapolis	Indianapolis International	P	M	4,788,308	4,209,416	13.75%
48	EA	PA	PIT	Pittsburgh	Pittsburgh International	P	M	4,492,980	3,918,968	14.65%
49	SO	KY	CVG	Hebron	Cincinnati/Northern Kentucky International	P	M	4,287,722	3,702,997	15.79%
50	GL	OH	CMH	Columbus	John Glenn Columbus International	P	M	4,095,178	3,618,555	13.17%
51	SO	FL	PBI	West Palm Beach	Palm Beach International	P	M	3,815,644	3,257,730	17.13%
52	WP	HI	OGG	Kahului	Kahului	P	M	3,745,866	4,125,311	-9.20%
53	SO	FL	JAX	Jacksonville	Jacksonville International	P	M	3,619,735	3,177,393	13.92%
54	WP	CA	ONT	Ontario	Ontario International	P	M	3,181,161	2,840,758	11.98%
55	WP	CA	BUR	Burbank	Bob Hope	P	M	3,132,019	3,054,729	2.53%
56	NE	CT	BDL	Windsor Locks	Bradley International	P	M	3,122,158	2,844,713	9.75%
57	SO	SC	CHS	Charleston	Charleston AFB/International	P	M	3,032,677	2,608,497	16.26%
58	GL	WI	MKE	Milwaukee	General Mitchell International	P	M	2,936,382	2,671,281	9.92%
59	AL	AK	ANC	Anchorage	Ted Stevens Anchorage International	P	M	2,681,811	2,604,308	2.98%
60	SW	NM	ABQ	Albuquerque	Albuquerque International Sunport	P	M	2,605,163	2,317,836	12.40%
61	CE	NE	OMA	Omaha	Eppley Airfield	P	M	2,464,397	2,204,395	11.79%
62	SO	TN	MEM	Memphis	Memphis International	P	M	2,399,856	2,163,692	10.91%
63	EA	VA	RIC	Highland Springs	Richmond International	P	M	2,399,207	2,042,834	17.45%
64	NM	ID	BOI	Boise	Boise Air Tml/Gowen Field	P	M	2,369,164	2,230,467	6.22%
			33				M Count			
65	EA	VA	ORF	Norfolk	Norfolk International	P	S	2,307,887	2,065,116	11.76%
66	EA	NY	BUF	Buffalo	Buffalo Niagara International	P	S	2,291,949	2,007,508	14.17%
67	SO	KY	SDF	Louisville	Louisville Muhammad Ali International	P	S	2,267,997	1,893,647	19.77%
68	WP	NV	RNO	Reno	Reno/Tahoe International	P	S	2,251,808	2,132,856	5.58%
69	SO	FL	SRQ	Sarasota	Sarasota/Bradenton International	P	S	2,144,700	1,911,999	12.17%
70	SW	OK	OKC	Oklahoma City	Will Rogers World	P	S	2,135,106	1,928,418	10.72%
71	WP	HI	KOA	Kailua Kona	Ellison Onizuka Kona International at Keahole	P	S	2,097,042	2,006,013	4.54%
72	SW	TX	ELP	El Paso	El Paso International	P	S	2,018,134	1,931,067	4.51%
73	NM	WA	GEG	Spokane	Spokane International	P	S	2,002,283	1,905,541	5.08%





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September 16, 2024

**BY ELECTRONIC MAIL**

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U.S. Department of Transportation  
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Re: EAS Program – Boutique Air, Inc. – Jackson, TN, Muscle Shoals, AL, Show Low, AZ

Dear Assistant Secretary Petsonk, Deputy Assistant Secretary Baraban, and Associate Director Muldoon:

On behalf of our client Boutique Air, Inc. ("Boutique"), we appreciate the opportunity to present to the Department of Transportation serious issues and concerns that have arisen in connection with the Department's Essential Air Service ("EAS") program. Recently, Boutique has not been selected for various EAS awards despite presenting fully responsive and highly competitive proposals. The manner in which the awards were decided has prompted Boutique to file multiple petitions for reconsideration with the Department, specifically:

1. Petition for Reconsideration filed August 31, 2024, of the August 8, 2024 decision to award an EAS contract to Denver Air Connection ("DAC") for Jackson, Tennessee, Docket No. DOT-OST-2000-7857;

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2. Petition for Reconsideration filed August 31, 2024 of the August 21, 2024 decision to award an EAS grant for Muscle Shoals, Alabama to Contour Airlines ("Contour"), Docket No. DOT-OST-2000-7856; Order 2024-8-15; and
3. Petition for Reconsideration filed August 31, 2024 of the August 22, 2024, decision to award the EAS contract for Show Low, Arizona, to Contour, Docket No. DOT-OST-1998-4409.

A common theme throughout the pending Boutique petitions for review is the fact that there is zero indication as to how the Department complied with – and balanced – the requirements of 49 U.S.C. § 41733(c)(1), which directs the Department to consider, among other factors, five specific factors when making an air carrier selection for a community not in Alaska where basic EAS will not be provided without compensation:

- (A) the demonstrated reliability of the applicant in providing scheduled air service;
- (B) the contractual, marketing, code-share, or interline arrangements the applicant has made with a larger air carrier serving the hub airport;
- (C) the preferences of the actual and potential users of air transportation at the eligible place, including the views of the elected officials representing the users;
- (D) whether the air carrier has included a plan in its proposal to market its services to the community; . . . and
- (F) **the total compensation proposed by the air carrier for providing scheduled air service under this section.** (Emphasis added)

Among other things, there is no indication as to the weight that the Department afforded to the fact that Boutique's financial proposal was significantly less expensive to the Department than the winning proposal. If the Department is going to award an EAS contract to a bidder that is significantly more expensive than other legitimate proposals, there needs to be a clear rationale to justify such a decision. Instead, the Department has stated that the winning proposal is "reasonable" without providing any justification for the expenditure of millions of additional dollars to obtain service from the winning bidder. The awarding of such a bid follows a long pattern of unjustifiable and anti-competitive decision-making which seemingly takes no issue with the fact that the selected airlines are charging millions of dollars more than Boutique would if its proposal were accepted by the Department.

Relatedly, there is no indication that the Department considered the negative impact on the airport's qualification to receive EAS given the amount of subsidy proposed by the airline selected by the Department.

There is also no evidence that the Department considered the fact that Boutique offered to provide the EAS with smaller aircraft than the competing proposals which, in turn, is better for the environment.

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Although Boutique appreciates the Department's attention to its pending petitions for reconsideration, we are cognizant of the 60-day deadline to file a petition for review of the Department decisions with the Circuit Court of Appeals pursuant to 49 U.S.C. 46110. In order to avoid uncertainty in connection with the issue of ripeness of any petition that Boutique files – and to obtain resolution of outstanding issues sooner rather than later – Boutique respectfully requests that the Department resolve the pending petitions for reconsideration by or before October 1, 2024. While the Department has at times in the past timely ruled on petitions for reconsideration of EAS decisions, on other occasions, the Department has not timely ruled, which creates issues for the ripeness of the Circuit Court of Appeals. To avoid ripeness issues, the Department should timely respond to pending petitions for reconsideration.

We respectfully ask that the Department issue rulings on the pending Boutique petitions for reconsideration no later than October 1, 2024. If the Department does not issue and provide Boutique with a copy of those decisions by that date, Boutique will reasonably assume that the lack of a ruling is in and of itself a final decision of the Department to deny the petition for reconsideration, and shall proceed on that basis.

We are available at your convenience to meet with you – in person or virtually – to discuss this matter.

Sincerely,

*/s/ Roy Goldberg*

CLARK HILL PLC

Counsel for Boutique Air, Inc.

Copy: Mr. Shawn Simpson, Mr. Eitan Spiegel